IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5459 OF 2004

Shri Sadashiv Ganpat Shinde,)
Age about 74 years, Occupation)
Retired, Residing at 478,)
Shukrawar Peth, Pune - 411 002.) ... Petitioner

Versus

1. Sau. Madhavi w/o. Irama)
Dhaphale, age 45 years,)
Occupation - Household.)

2. Shri Irama s/o Malleshi)
Darphale, age about 50 years)
Occupation : Service, Both)
are residing at 478,)
Shukrawar Peth, Pune-411 002.) ... Respondents

Mr. P.J. Pawar for the petitioner.

Mr. S.J. Rairkar for the respondents.

CORAM: SMT. RANJANA DESAI, J.

DATED: 8TH FEBRUARY, 2005.

JUDGMENT:-

1. Rule. By consent of the parties, taken up for final hearing forthwith.

2. The petitioner is the original defendant (for convenience, "the defendant") and the respondents are the original plaintiffs 1 and 2 respectively (for convenience, "plaintiffs 1 and 2") in Civil Suit No.473 of 1998, which was filed in the Court of Additional Judge, Small Causes Court, Pune at Pune.

3. The suit was filed on the ground of arrears of rent,

acquisition of suitable accommodation by the tenant and bonafide and reasonable requirement of the landlord. The suit was decreed on the grounds of acquisition of suitable accommodation by the tenant and bonafide and reasonable requirement of the landlord. The lower appellate court confirmed the decree on the said grounds. Hence, it is not necessary to burden this judgment with the facts pertaining to allegation of arrears of rent.

4. The relevant facts may be shortly stated. Plaintiffs 1 and 2 are the owners of the suit premises being two rooms situated on the first floor of the property bearing House No.478, Shukrawar Peth, Pune (for convenience, "the suit premises"). The suit premises were let out to the defendant for residential purpose on monthly rent of Rs.30/- plus taxes. According to the plaintiffs, the defendant has acquired one flat at Bibvewadi, Sukhasagar Nagar. He is also in possession of property bearing Survey No.32/5 at Ambegaon, Taluka Haveli in which there is a big house bearing No.228/3. The defendant also has another house bearing No.57 at Ward No.1 at Ambegaon, Budruk. All these houses are suitable for the defendant for his residential requirement. According to the plaintiffs, the plaintiffs are in possession of only three rooms admeasuring about 270 sq.ft. There are 15 members in the plaintiffs' family. Sons of the plaintiffs are studying. They require separate room for their studies. Thus, the present premises having three rooms are not sufficient to accommodate the plaintiffs and members of their family. According to the

plaintiffs, as the defendant has another suitable accommodation available if the decree is passed in favour of the plaintiffs, it will not cause hardship to the defendant. However, if the decree is not passed in favour of the plaintiffs, that will cause greater hardship to the plaintiffs. On these grounds, the plaintiffs filed the suit for eviction.

5. The defendant denied the plaintiffs' allegations. He admitted that the plaintiffs are his landlords. He contended that he is not concerned with the property at Ambegaon. The said property is owned by his wife. He and his wife are not residing in the said property nor is it suitable for residence. He also contended that he is an aged person serving in a private shop and he receives a meagre salary. His married son is not on good terms with him and his wife and, therefore, the defendant and his wife have asked him to stay separately at Ambegaon. Accordingly, his son is residing in the said property. Except his son Sambhaji Shinde, all other members of his family are residing in the suit premises. The defendant denied that only three rooms admeasuring 270 sq.ft. are in possession of the plaintiffs. He also denied that there are 15 members in the plaintiffs' family and that, they require the suit premises reasonably and bonafide for their own use. According to the defendant, the suit premises were previously owned by one Kure family. The plaintiffs purchased the suit premises in the year 1996. The defendant is the tenant in the suit premises since 1936. The plaintiffs have purchased the suit premises

for the purpose of development. After purchasing the suit premises, the plaintiffs have received possession of two rooms of the same property. The plaintiffs are not using the said rooms for residence. They have started business in the said rooms. According to the defendant, the plaintiffs are in possession of four rooms. Since, the number of family members of the defendant's family is more than that of the plaintiffs' family, if the decree is passed, greater hardship will be caused to the defendant and no hardship is likely to be caused to the plaintiffs if the eviction decree is refused. By additional written statement, the defendant has contended that the property bearing House No.57, Ward No.1, Ambegaon is not available to him. It is contended that there are no amenities, facilities in the said property and it is only a shed in which certain material, which is not in use, is stored.

6. In support of the plaintiffs' case, the plaintiffs examined PW-1 Iranna, who produced certain documents on record in support of the plaintiffs' case. The plaintiffs also examined PW-2 Baburao Adsule and PW-3 Shantabai Khure. In support of his case, the defendant examined himself. He also examined one Bharat Sakharam Adkar.

7. Both the courts having held against the defendant on the grounds of bonafide and reasonable requirement of the landlord, on the point of hardship and on the ground of acquisition of suitable alternate accommodation, the

defendant has approached this court by way of this writ petition.

8. I have heard at some length the learned counsel appearing for the petitioner. He contended that the impugned judgments suffer from patent illegality and, hence, they deserve to be set aside. He contended that the judgments of the courts below are against the wight of evidence on record. The courts below fell into a grave error in wrongly placing the burden on the tenant. He further submitted that it is apparent from the evidence on record that the plaintiffs had suppressed the truth. They falsely contended that there are fifteen members in the plaintiffs' family when in fact there are only six members in the plaintiffs' family and therefore, this suppression disentitles the plaintiffs from getting any relief. He submitted that adverse inference needs to be drawn against the plaintiffs and on that count the impugned judgment and decree be set aside. The learned counsel for the respondents on the other hand submitted that unless the finding of fact reached by the courts below is perverse, it should not be interfered with by this court in its jurisdiction under Article 227 of the Constitution of India. He submitted that in the present case, the findings of facts are unassailable and, hence, the petition be dismissed.

9. I have given my anxious consideration to the submissions advanced by both sides.

10. Before I deal with the ground of acquisition of alternative accommodation by the defendant, it is necessary to refer to the judgment of the Supreme Court in **Ganpat Ram Sharma and others v. Smt. Gayatri Devi, AIR 1987 SC 2016**, where the Supreme Court was dealing with the same ground. The Supreme Court made it clear that the landlord, in order to be entitled to evict the tenant, must establish one of the alternative facts positively, either that the tenant has built or acquired vacant possession or has been allotted a residence. It was further observed that it is essential that the ingredients must be pleaded by the landlord who seeks eviction but after the landlord has proved or stated that the tenant had built or acquired vacant possession or has been allotted a residence, whether it is suitable or not, and whether the same can be really an alternative accommodation for the tenant or not, are facts which are within the special knowledge of the tenant and he must prove and establish these facts.

11. In this case, in the plaint, the plaintiffs have specifically raised a contention that the defendant has acquired premises being House No.232/2 situate at Survey No.32/5 at Village Ambegaon. The plaintiffs have stated that the defendant owns a house bearing House No.57, Ward 1 at Ambegaon. The defendant has not denied this fact. According to him, this property is inherited by his wife and on account of family dispute, his married son Sambhaji is residing there. So far as the submission that this property is inherited by defendant's wife, is

concerned, no evidence is produced. Assuming that this property is in the name of his wife, no evidence is brought on record to show that the wife has independent income. Therefore, assuming that the said property stands in the name of the defendant's wife, it must be presumed to be the defendant's property. The defendant has admitted in the additional written statement that House No.57 at Ward No.1, Ambegaon is owned by him but, his case is that there is only a shed at this place and in that shed some material has been kept by his wife's relatives, which is not in use. Thus, availability of alternative accommodation is clearly established by the evidence on record. This finding of fact of the trial court is rightly affirmed by the lower appellate court. As stated by the Supreme Court in **Ganpat Ram Sharma's case (supra)**, that these alternative accommodations are not suitable to the defendant must be established by him. But, in this case, the defendant has failed to discharge this burden. He has not given the measurements of these premises to show that they are not suitable for his requirement. He has not examined his son, who is allegedly staying in one of the available accommodations. He has merely stated that there is a great distance between the place where he is working and village Ambegaon. The plaintiffs have brought on record the Government Gazette, which shows that village Ambegaon is now within the limits of Pune Municipal Corporation and suitable transport facilities are now available for people travelling from Ambegaon to Pune. The courts below have held that this distance is not too much and

would not cause inconvenience to the defendant. Mere distance cannot be a ground to make the alternative accommodation not suitable. In my opinion, the defendant has failed to prove that the alternative accommodation is not suitable for his requirement. Thus this concurrent finding of facts of the courts below deserves to be upheld.

12. So far as the reasonable and bonafide requirement of the landlord is concerned, the law is well settled by the Supreme Court. The requirement of the landlord has to be reasonable, it should be bonafide and the hardship of the tenant, in case of eviction, should not be more than that of the landlord, if he fails to get the eviction order. The requirement must be sincere and honest and should not be a mere pretext to evict the tenant. Once the court is satisfied about the requirement of the landlord and that no other alternative accommodation is available to him then the choice of the landlord should not be rejected because the landlord will be the best judge of his requirement and his contention that the alternative accommodation available to him is not suitable for his requirement must be given due weightage. The court cannot foist its choice upon the landlord.

13. The plaintiffs have contended that there are three rooms in their possession and they are using them for their residence. There is another room in their possession, which they are using as a shop. According to the defendant, apart from the three rooms which are used

by the plaintiffs for residence, there are two other rooms which are used by the plaintiffs for shop and godown and, therefore, the plaintiffs' requirement is not bonafide. The courts below have held that the defendant has not proved, by adducing cogent evidence, that two more rooms are acquired by the plaintiffs. Both the courts have further held that the plaintiffs have acquired only one room and that room is being sued for shop. I do not find any perversity in this finding of fact so as to disturb it.

14. It is true that the plaintiffs have come out with a case that there are fifteen members in their family but the courts below have, after appreciation of evidence, come to the conclusion that there are only eight members in their family. There are two couples and two children residing in three rooms. Each room admeasures 9' x 10'. Obviously therefore, the available accommodation is insufficient for the plaintiffs and their family. In my opinion, the courts below have rightly held that in view of these facts, the plaintiffs' requirement is reasonable and bonafide.

15. It was argued that the plaintiffs have initially come out with a false case that there are fifteen members in their family. The courts below have found that there are only eight members. According to the learned counsel for the defendant, the plaintiffs have made an effort to mislead the court and, therefore, their requirement is not bonafide. In this connection, reliance is placed on

the judgment of the Supreme Court in **Kishan Chand v. Jagdish Pershad and Others, (2003) 9 SCC 151**. In that case, the landlord had sought eviction of the tenant on the ground that the suit premises were bonafide required for use by his son and son's family, but had concealed the fact that the son owned a residential flat and also had not challenged in cross-examination deposition of respondent tenant that the landlord had in his possession 35 rooms in the building in which the suit premises were located. The Delhi High Court had come to a conclusion that the landlord was guilty of concealment of material facts and that the rent controller has rightly rejected his case of bonafide and reasonable requirement. The Supreme Court affirmed this view. In my opinion, the present case will not be covered by the ratio of this judgment. In **Kishan Chand's case (supra)**, the son of the landlord owned a residential flat and there were 35 rooms available to the landlord. The said rooms were in the same building in which the suit premises were located. This was a case of gross concealment of material facts which reflected on the credibility of the landlord's case. Such are not the facts here. It is true that here the plaintiffs have tried to state that there are fifteen members in their family. As the evidence was recorded, it was found that one of the brothers along with his family was not residing in the suit premises. In my opinion, the facts of this case, cannot be equated with the facts which were before the Supreme Court in **Kishan Chand's case (supra)**. Here it appears that one of the brothers of the plaintiffs had separated and was staying

in a separate accommodation. A slight exaggeration to which the witnesses are prone cannot be called concealment of facts. The fact remains that there are eight members in the plaintiffs' family. The said eight members include two couples and their children and only three rooms are available to them. Both the courts have, therefore, rightly held that the plaintiffs' requirement is reasonable and bonafide. Besides, suitable alternative accommodation is also available to the defendant. On the point of hardship also, the courts below have rightly held that no hardship will be caused to the defendant if the decree of eviction is passed but the plaintiffs will suffer great hardship if the decree of eviction is refused. Therefore, this is not a case where in my jurisdiction under Article 227 of the Constitution of India, I should interfere with the concurrent findings of facts of the courts below. In view of this, the petition deserves to be dismissed and is dismissed as such.

16. At this stage, the learned counsel for the defendant states that the defendant be given some time to vacate the premises. The learned counsel for the plaintiffs objects. In the circumstances of the case, the defendant is given eight weeks' time to vacate the suit premises on the condition that the petitioner-defendant and all adult members residing in his family filing usual undertakings in this court within a period of three weeks from today.

(SMT. RANJANA DESAI, J.)